COURT FEE भारत INDIA पाँच रुपये FIVE RUPEES

CANCELLED

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SECOND APPEAL No. 130 OF 2004 Single Bench

APPELLANT
PLAINTIFF

Butiram, aged about 68 years S/o Motiram Ram Sounra (Sanvra), occupation, agriculture, presently resident of Pandaripani (East) Tehsil & Dist.Raigarh (Chhattisgarh)

Versus

RESPONDENTS
DEFENDANTS

1. Kirtan, aged about 65 years, S/o Bhagirathi Sounra
2. Sankirtan, aged about 34 years, S/o Bhagirathi Sounra
3. Sadram, aged about 70 years, S/o Sakram Sounra
4. Banshiram, aged about 65 years, S/o Sakram Sounra
5. Shyamlal, aged about 40 years, S/o Harichand Sounra
6. Dokri, aged about 65 years, Widow of Harichand
7. Sulochana, aged about 48 years, Widow of Ramlal
8. Ghasiya, aged about 26 years, S/o Ramlal
9. Phulki, aged about 58 years, (Died), S/o Bhrugdev, represented by Laxman Singh, aged about 38 years, S/o Rusiram, resident of Jashpurnagar (Chhattisgarh)
10. Bedmati, aged about 55 years, D/o Bhrugdev
11. Bedram, aged about 58 years, S/o Satyanand Aghariya
12. State of Chhattisgarh through the Collector, Raigarh, District Raigarh (Chhattisgarh)

P. R. No. 559/04 S. R. Jails
Presented by Shri ... dated 26.03.04

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Clerk to A. G. Bilaspur

(4)

No. 1, and 3 to 6 & No. 9 to 11
are residents of Village
Kanvariha, Tehsil and District
Raigarh (Chhattisgarh)

No. 2, resident of village Banjari,
Tehsil Sarangarh, District Raigarh
(Chhattisgarh)

No. 7 & 8 residents of village
Shankarpali, Tehsil Dabhra,
District Janjgir-Champa
(Chhattisgarh)

MEMO OF SECOND APPEAL UNDER SECTION 100 C.P.C.

APR

HIGH COURT OF JUDICATURE AT BILASPUR

SECOND APPEAL NO.130 OF 2004

Butiram
Vs.
Kirtan Ram and others

JUDGMENT

Post for 13.12.2004

Sd/-
Sunil Kumar Sinha
Judge

Seen
13/12/04
(Counsel for appellants)

(42)

HIGH COURT OF JUDICATURE AT BILASPUR

SECOND APPEAL NO.130 OF 2004

Butiram
Vs.
Kirtan Ram and others

Shri H. S. Patel, counsel for the appellant.

State by Shri Neeraj Mehata, Panel Lawyer.

Sunil Kumar Sinha, J

JUDGEMENT
(13/12/2004)

Heard on the question of admission.

This appeal has been filed under section 100 of the Code of Civil Procedure. The plaintiff has filed this appeal against the impugned judgment and decree dated 30.12.2003 passed in Civil Appeal No.37-A of 2002 by the First Additional District Judge, Raigarh, arising out of the judgment and decree dated 28th January 2002 passed in Civil Suit No.49-A/1999 by the Civil Judge, Class-II Raigarh, District Raigarh (C.G). The plaintiff lost in both the courts.

(2) Brief facts for disposal of this appeal are as under:

The plaintiff filed a civil suit for the relief of declaration of title and also for declaration that the order passed by the Sub-Divisional Officer in Revenue Case No.85/A-23/1989/90 on 25.3.1991 (Ex.P.5) is void. He also prayed for confirmation of possession and in the alternative prayed that if his possession is

not found, the suit lands be restored to his possession. The suit lands are agricultural lands bearing Khasra Nos.121/2 area 31 decimals and 365/4 area 1.43 acres. It is admitted in this case that the plaintiff and defendants No.1 to 10 are the members of the Scheduled Tribe and are **"Swara"** by caste. It is also admitted that the defendant no.11 Vedram is **"Aghariya"** by caste which is neither a Scheduled Caste nor a Scheduled Tribe. It is also admitted that the sale deed dated 24.5.1967 which relates to Khasra No.121/2 area 31 decimals (Ex.P.1) and sale deed dt.28.8.1970 which relates to Khasra No.365/4 area 1.43 acres (Ex.P.2) were executed in the name of plaintiff by the predecessors of defendants no.1 to 10. It is also admitted that the Sub-Divisional Officer, Raigarh conducted an enquiry under section 170-B of the M.P. Land Revenue Code 1959 (hereinafter referred to as the "Code") through the revenue case number referred to above in which the plaintiff participated and on 25.3.1991 an order was passed by the Sub-Divisional Officer for restoration of the suit lands to defendant no.1 to 10 under the provisions of section 170-B of the Code. It is also admitted that against the aforesaid order, passed by the Sub-Divisional Officer ,no appeal was filed by the plaintiff or the defendant no.11 and the order became final.

(3) The plaint allegations are that plaintiff purchased the aforesaid lands from the predecessors of defendants no.1 to 10 by the said two registered sale deeds dated 24.5.1967 and

28.8.1970 (Ex.P.1 & P-2) for the consideration of Rs.600/- and Rs.3000/- respectively. It is further alleged that the possession of the said agricultural lands were also handed over to the plaintiff and the sale was complete in all respects. However on a report of the Revenue Officer regarding transfer in contravention of section 165 of the Code, the said proceedings under section 170-B were initiated by the Sub-Divisional Officer on the allegations that the lands recorded in the name of plaintiff under the aforesaid sale deeds were in fact the lands of ownership and possession of defendant no.11 who belongs to a general caste and the transaction between the plaintiff and the predecessors of the defendants 1 to 10 was a *Benami* transaction. The plaintiff further alleges that the Sub-Divisional Officer came in the camp court and he was noticed by him. Though the statements were recorded by the S.D.O. but no proper opportunity of hearing was given to him. In fact, the plaintiff was not knowing about the order dated 25.3.1991 which was passed by the Sub-Divisional Officer in the aforesaid proceedings and when this order came to his knowledge on 21.02.1994 then only he filed the aforesaid civil suit. He further alleges that defendant no.11, namely Vedram is not at all concerned with the plaintiff and since the transaction was between the homogeneous categories (Adivasi to Adivasi), section 165(6) of the Code are not applicable in his case hence section 170-B is not attracted and the order passed in the said

proceedings are illegal. It is also pleaded that the order has been passed without adopting proper procedure.

(4) That some of the contesting defendants among defendants no.1 to 10 filed their written statement denying the contentions of the plaintiff. It was pleaded by them that in fact no purchase was made by the plaintiff and the actual purchaser of the property was the defendant no.11. Since the defendant no.11 was not legally entitled to purchase the property on his own name, therefore, the sale deeds in the name of the plaintiff vide Ex.P.1 & P-2 were executed. They denied the contentions of the plaintiff about not giving proper opportunity of hearing before the Sub-divisional Officer and pleaded that the order passed by the Sub-Divisional Officer was fully justified. Defendant no.11 has not filed any written statement in this case.

(5) Learned trial Court framed various issues and after recording the evidence of parties, dismissed the suit of the plaintiff holding that in fact, the defendant no.11 was the real purchaser of the suit lands and the order passed by the Sub-Divisional Officer was legal and binding and the same was passed after giving due opportunity of hearing to the parties.

(6) Against the aforesaid judgment and decree passed by the trial Court, the plaintiff filed an appeal before the lower appellate Court, but the lower appellate Court also dismissed his appeal.

The lower appellate Court while confirming the judgment and decree passed by the trial Court also considered this point that since the provisions of section 170-B of the Code are attracted, therefore, the civil suit would be barred u/s 257(l) of the Code. In this way having been lost in the two Courts below, the plaintiff has come up in the second appeal before this Court under section 100 of the Code of Civil Procedure.

(7) The learned counsel for the appellant argues that in fact the real purchaser of the land is the plaintiff who purchased the same vide Ex.P.1 and P-2 from the predecessors of defendants no.1 to 10. Defendant no.11 is not at all concerned with the aforesaid transactions and the finding in this regard recorded by the Sub-Divisional Officer u/s 170-B of the Code is illegal and not binding on him. He further submits that in fact, no opportunity of hearing was afforded to the plaintiff before the Sub-Divisional Officer and the order passed by the Sub-Divisional Officer vide Ex.P-5 cannot be sustained. He also argues that since the order was passed violating the fundamental principles of natural justice and the same is a nullity, therefore, the civil court will have jurisdiction to entertain the civil suit even after a bar created by section 257(l) of the Code. He further argues that the transactions were not the *Benami* transactions and the findings are bad in law.

(8) This Court has gone through the judgment and decree passed by the two courts below and has also perused the records. It is apparent from the bare perusal of Ex.P.5 that a regular proceeding u/s 170-B of the M.P. Land Revenue Code 1959 was initiated by the Sub-Divisional Officer and after issuing notice to the plaintiff the matter was taken up for hearing in his camp court. The plaintiff had also participated in the said proceedings and his evidence was also recorded during the course of enquiry. The evidence of the plaintiff has been filed by the defendants and is marked as Ex.D.2. In the said evidence, he has made admission that in fact, defendant no.11 had purchased the suit lands from the predecessors of defendants no.1 to 10, but the sale deeds were executed on his name. The sale considerations were also paid by defendant no.11 and it was not paid by him. In fact the defendant no.11 was holding the possession of the suit land. On the face of these admissions and also on the face of the evidence recorded by the Sub-Divisional Officer, it cannot be said that either the Sub-Divisional Officer has not given an adequate opportunity of hearing to the plaintiff or the finding recorded by him in relation to the aforesaid transactions are bad in law. As a matter of fact, after going through the entire order (Ex.P.5) it would be clear that a proper opportunity of hearing was afforded to the plaintiff and the plaintiff himself admitted before the Sub-Divisional Officer regarding the real purchase by the defendant no.11 from

the predecessors of the defendants no.1 to 10 vide sale deeds Ex.P.1 & P.2.

(9) On the basis of the aforesaid discussion and also on the basis of material available on record it cannot be said that two courts below committed error of law while recording this finding that the order passed by the Sub-Divisional Officer vide Ex.P.5 was not illegal and the same was binding on the parties.

(10) In the facts and circumstances of the case, it cannot be held that the aforesaid orders passed by the Sub-Divisional Officer was either a nullity or was passed violating the fundamental principles of natural justice. In the opinion of this Court, such orders passed by the Revenue Authority under the provisions of Section 170-B of the M.P. Land Revenue Code are not open for challenge before the Civil Court under the bar created u/s 257(l) of the Code and the same are final and binding. In this view of the matter, the trial Court as well as the first appellate Court has not erred in holding that the plaintiff could not establish his case for passing a decree in his favour and correct judgment and decree have been passed by the two courts below.

(11) Since the existence of a substantial question of law is the *sine qua non* for the exercise of jurisdiction under the amended provisions of section 100 C.P.C., as has been laid down by the

Apex Court in the matter of *Thiagarajan and others -Vs- Sri Venu Gopala Swamy B. Koil reported in (2004) 5 SCC Pg.762* and no substantial question of law is involved in this case warranting interference by this Court under section 100 of the Code of Civil Procedure, this appeal filed by the plaintiff deserves to be and is accordingly dismissed at the admission stage itself. No order as to cost.

(12) Consequently, M.C.P.No.347 of 2004 for stay and I.A.No.751/2004 for urgent hearing stand disposed of.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/